IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Alaska Region
P.O. Box 25520
Juneau, Alaska 99802-5520

May 10, 2002

Ms. Lynn Carlson
Native Village of Port Heiden
P.O. Box 49007
Port Heiden, Alaska 99549

COPY

Dear ~~Ms. Carlson~~ Lynn,

Please find enclosed the disc you sent me last week containing the Port Heiden Constitution and election resolution. I copied my marked up version onto the disc as ***ReviewedPTHeidenConstitution***. Hopefully you will be able to open it without any difficulty. Just in case however, I am also enclosing a printed copy.

Please note that on the *marked-up* document (on disc and hard copy), your version is printed in **black** and/or **blue** ink with my questions, comments/suggestions in **red**. Please remember too, that my comments/questions are only that. You are not required to change your document to *satisfy* my comments. I do hope though that my comments/questions will help you in your quest to make the constitution more clear and responsive to the needs of the tribe. If you have any questions or require clarification on any of my comments, please advise.

I did not have the time to retype your Election Ordinance. My scanner is still not working, so if you can send me another disc with the ordinance on it, it is far easier and much faster for me to review and mark-up than any other method. I am enclosing however, a printed copy of what I had already gone over with you in Port Heiden, when Charlie Bunch and I visited. As I mentioned then, it was just a cursory review since I did not have, at the time, a copy of a constitution that I had any confidence was approved by the tribe.

After you've had a chance to review and consider my comments, it might be helpful to meet and discuss what or how to proceed next. Hope this is of some help to you.

Sincerely,

Timothy D. DeAsis
Tribal Government Services

cc: Charlie Bunch, Anch. Field Rep.
File Copy ✓

NATIVE COUNCIL OF PORT HEIDEN
P.O. Box 49007
Port Heiden, Alaska 99549
(907) 837-2296 Fax (907) 837-2297

CONSTITUTION
OF THE
NATIVE VILLAGE OF Port Heiden

COPY

PREAMBLE

We, the Alaska Natives of Port Heiden, Alaska, citizens of the United States and descendants of the original inhabitants of this land, having common bonds of ancestry, culture, and community identity, in order to implement our inherent right of self-government as an Alaska Native people and to further our common political, social, and economic progress, do ordain and establish this constitution. (is general health, safety and welfare included?)

ARTICLE I. NAME

This community shall be called the Native Village of Port Heiden.

ARTICLE II TERRITORIAL JURISDICTION

The territorial jurisdiction of the Native Village of Port Heiden shall extend:

(a) to all lands within the city limits of the state-chartered City of Port Heiden

(b) to all lands acquired by the Native Village of Port Heiden, including any federal lands held in trust for the village (tribe?)or its inhabitants;

(c) to all lands selected by the Alaska Peninsula Corporation (formerly the Meshik Corporation) under the Alaska Native Claims Settlement Act;

(d) to all other land(s), regardless of ownership, within the exterior boundaries formed by the lands specified in the previous sub-parts of this Article; and

(e) to any other Indian Country of the Native Village of Port Heiden as may exist under federal law.

COPY

ARTICLE III. MEMBERSHIP

Section 1. Base Membership:
All persons listed on the Base Roll of the Native Village of Port Heiden shall be members of the (tribe?)village (…what does this mean?). The Base roll is to be certified by the village (tribal?)council by __(date)___(has this happened yet? If so, when?) unless extended by the council and is to include only those living persons of __1/16__ (does **this** minimum blood quantum only apply to **base** members/enrollees?)Alaska Native or American Indian descent who: (**if**, there was intent to limit eligibility for membership to residents of the village, the below would appear to negate or conflict with that requirement…)

(a) Are domiciled in the village at the time the Base Roll is certified; or

(b) were born or raised (but not necessarily living *now*..?) in the village; or

(c) have such substantial ties to the village (/tribe?) as to be considered members of the village (/tribe?) by common community knowledge, as determined by the village (tribal)council; or

(d) are shareholders of __the Alaska Peninsula Corporation__ and have other significant ties to the village (/tribe?), as determined by the village (tribal?) council.

Section 2. New-Members (… is there minimum blood degree?) (should you have subsections for Auto Eligible for membership… Descendents: …?)

(a) Children: All children born to members residing in the village and all children biologically of Alaska Native or American Indian descent who are adopted by membership upon application. (is this limited to Alaska Natives/American Indians born to or adopted by **resident members only**?)

(b) New Residents: Any person of Alaska Native (or Am Indian?) descent who lives in the village for at least __one year__ (immediately prior to application for membership?) and intends to remain in the village shall be admitted to membership upon application.

(c) Adopted Members: Any person of Alaska Native or American Indian descent not otherwise eligible for membership but with familial or other significant ties to the village may be admitted to membership at the discretion of the village (tribal?)council.

~~(Optional)~~ (what does this mean? should be applicable or not…)
Section 3. Dual Membership Prohibited (this ***Section***, maybe ought to be an introductory paragraph for this Article instead of a section…)

Notwithstanding any other provision of this Article, no person may be a member of the Native Village of Port Heiden who is also an enrolled member of another federally recognized ~~Alaska Native village or Indian~~ tribe.

Section 4. Loss of Membership

Membership may be voluntarily relinquished by written notice from a member to the council. The council may revoke membership involuntarily for just cause upon due process of village (tribal?)law. (maybe this/these two sentences should be listed as an a and b also, seems out of place here…)

~~(Optional)~~ (what does this mean? should be applicable or not…)
Section 5. Honorary Members

Persons not eligible for membership may be designated honorary members by the village council. Honorary members may ~~h~~not hold elective office, do not have the right to vote, and do not become eligible for tribal benefits by reason of their honorary membership.

Section 6. Regulation of Membership

The village (tribal?)council may (recommend you decide whether you are going to do or not and not leave it open…) establish an enrollment committee to develop the Base Roll and process applications and may (recommend you decide whether you are going to do or not and not leave it open…) establish rules and procedures governing enrollment, including application and appeals procedures.

ARTICLE IV. VILLGE COUNCIL

Section 1. Name

The governing body of the Native Village of Port Heiden shall be the Port Heiden Village Council, hereinafter referred to as the council.

Section 2. Composition

The council shall consist of __(five)__ (is it 5 or 7?)resident (have to be a resident?) members of the village (tribe?)(and?) of at least 1/16 blood quantum_ (minimum blood quantum for council membership only?) who shall be elected by a majority (highest?)vote (getters?)of the eligible voters (who are they?)at the annual membership meeting. Council members shall take office immediately upon election. (…Except for the *initial* year under this constitution, council members will normally be elected to serve three year terms. For the sake of continuity, council seats/terms will be staggered as follows…)

Section 3. Officers

The council (officers) shall include a President, a Vice-President, a Secretary and a Treasurer. The Secretary and Treasurer may be the same person. Officers shall be selected (elected?)by the council from (within?) its members immediately following the annual meeting. (in other words, **officers** are to be elected/selected each year from within the council?)

Section 4. Term of Office

(Elected?) Council members shall serve for a term of three years~~, with staggered terms~~(for sake of continuity, terms will be staggered as follows…).

Section 5. Vacancies

Any office, which is vacated, shall be filled by appointment by the remaining council members at their next meeting. The replacement shall serve (only?) until the next annual membership(/election?) meeting.

ARTICLE V. ELECTIONS

Section 1. Voter Qualifications

Any member (what constitutes a member?) of the Native Village of Port Heiden who has reached the age of 18 or older and who has resided in the village for at least 1 year (immediately prior to election?) shall be eligible to vote in all community (tribal?) elections and meetings.

Section 2. Elections

The regular election of officials (/council members?) and of questions requiring voter (membership?) approval shall be held at the annual membership meeting. Special elections may be called at other times by the council, with or without a meeting of the membership, provided that no election shall be called during fishing season or at times when substantial numbers of village residents are outside the village.

Section 3. Notice

The council shall publicize all village (tribal?)elections by customary village methods at least fifteen days in advance (of such election?).

Section 4. Secret Balloting

All elections of officials (/council members?) and on issues before the voters (membership?) by initiative or referendum shall be by secret ballot. Other votes taken at membership meetings shall (also?) be secret ballot if requested by three or more eligible voters.

Section 5. Election Committee

Prior to any village election, the council shall appoint responsible persons to supervise, administer and conduct the election. The council may (recommend you decide to do it, or not, but not leave it open ended…) by ordinance establish a permanent (does this mean election committee appointments are for life?) election committee and procedures for conducting village (tribal?) elections and maintaining voter rolls (voter registration?).

ARTICLE VI. REMOVAL FROM OFFICE (this Article was left out on disc)

Section 1. Misconduct or neglect. Any council member or other official found guilty by the council (what does this mean?) of behavior involving gross misconduct in office or neglect of duty may be removed from office by a vote of at least three members of the council. Voting must be by secret ballot and the accused, if a council member, is entitled to vote. Before any vote for removal is taken, the accused must be given a reasonable opportunity to answer the charges against him.

Section 2. Recall. **Eligible voters** (who are…?) shall have the power to remove any member of the council by recall. The process shall be initiated by giving a petition asking for such removal to the council. The petition must be signed by at least 20% of the **eligible voters** (who are…?) and must set forth the reasons for the petition. The council must hold a **community** (tribal?)election to consider the recall with-in thirty days of receipt of the petition.

~~(Optional)~~ (what does this mean? recommend you decide on this one way or the other)
Section 3. Forfeiture. Any council member who moves form the village, is convicted of a felony by state or federal court, or ceases to be a member of the village (tribe?) shall automatically forfeit his office. (for how long?)

ARTICLE VII. POWERS

Section 1. Assertion of Power

The Native Village of Port Heiden shall have all rights and powers of a sovereign, self-governing tribe except to the extent limited by federal law.

Section 2. Powers of Council

Except as otherwise provided by this constitution, all powers (not withheld or otherwise restricted by members/constitution?) of the Native Village of Port Heiden may be exercised by the village council.

Section 3. Power Reserved to Membership

Except by majority vote of the eligible voters (who are eligible voters?) no tribal taxes may be levied nor may any tribal lands or interests in lands be sold, leased, encumbered or other-wise disposed.

ARTICLE VIII. POPULAR PARTICIPATION IN GOVERNMENT

Section1. Initiative

The eligible voters (who are eligible voters?) of the village shall have the right to propose legislation or other community action. Upon receipt of a petition signed by at least __(20%)__ of the eligible voters (who are eligible voters?), the council shall call an election to be conducted within thirty (30) days of receipt of the (properly prepared and signed?) petition. (what is a properly prepared petition?) The election shall be by secret ballot. At least 20 % ~~of the eligible~~ of the eligible voters (who are eligible voters?) must vote for the election to be binding. (note, initiative is generally *membership initiated* that is usually accommodated via a petition…)

Section 2. Referendum

The village council may call an election for the purpose of deciding any issue or question which is within the authority of the council (what does this mean?). At least 20% of the eligible voters (who are the eligible voters?) must vote for (must vote for or, just must vote?) the election to be binding. (note, referendum generally comes from council referring issue to *popular vote* of membership…)

Section 3. Voter Decision Binding

The decision of the majority of voters in both initiative and referendum elections shall be binding on the council and the village and shall remain in full force until amended or rescinded by the voters or expires by its own terms.

ARTICLE IX. RIGHTS OF MEMBERS

Section1. Rights and Privileges

All members of the village (tribe?)shall enjoy without hindrance their rights as citizens of the United States.

Section 2. Indian Civil Rights Act

In exercising its power of self-government the village (tribe?) shall comply with the provisions of the Indian Civil Rights Act, 25 USC 1301, et. seq., and not infringe (on?) the individual liberties guaranteed therein. (where/who can members turn to, *to enforce*… particularly if council is one accused of violating…?)

Section 3. Right to Inspect Records

Members of the village (tribe?) shall have the right to review all (? what about personnel and other privileged documents?) records of the village (tribal?)government, including financial records, at any reasonable time in accordance with procedures established (has council established these procedures yet?) by the council.

ARTICLE X. DUTIES OF OFFICERS

Section 1. President

The President shall preside at all meetings of the community and of the council and shall execute on behalf of the village (tribe?) all contracts, leases, or other formal documents approved (/authorized?) by the council. He shall (have the right to?) vote in (all?) matters before the council. He shall have the general supervision of all other officers, employees and committees of the village and see that their duties are properly performed(?). When the council is not in session, he shall be the official representative of the community

Section 2. Vice President

The Vice President shall assist the President when called upon to do so. In the absence of the President, he shall preside and when presiding shall have all the rights, duties, privileges and responsibilities of the President.

Section 3. Secretary

The Secretary shall (insure proper, permanent, safe-keeping?) keep the minutes of all meetings and shall attest to the enactment of all resolutions and ordinances. He shall maintain in permanent form all minutes, resolutions, ordinances and rules of the village, which shall be (…unless otherwise *protected*?)public information. He shall issue notices of all meetings and elections and conduct all general correspondence as directed by the council.

Section 4. Treasurer

The Treasurer shall carry out (how, what does this mean?) the financial directives of the council, receive and safeguard all monies (what does this mean?) of the council and keep an accurate account of receipts and disbursements (usually these things are carried out by a *tribal administrator*). He shall report to the council all receipts and expenditures and the amount and nature of all council funds. Funds shall be deposited in a bank approved by the council where depositors' funds are insured by the Federal Deposit Insurance Corporation. All disbursements shall be made by check in accordance with resolutions of the council.

ARTICLE XI. MEETINGS

Section1. Regular and Special Meetings

Regular meetings of the council shall be held monthly, the time, place and date to be designated by the council. Special meetings of the council may be called by the President and shall be called by him upon request of at least two members of the council and when so called, the council shall have power to transact business as in regular meetings (…as long as a quorum is established?).

Section 2. Quorum

A quorum of the council shall consist of _three_ members of the council. No business shall be transacted unless a quorum is present. (note, some tribes use *one member over half* the number of council members there are to establish a quorum, this is in case a number of council members resign at the same time and those left are not sufficient to field a specified number for a quorum…)

Section 3. Conflict of Interest

No council member may vote on any matter pertaining specifically to him or to an immediate family member or on any matter in which he or an immediate family member has a significant financial interest. Nothing (however?) herein bars a council member from voting on a matter in which the benefit to him (and/or his immediate family?) is common to that of village (tribal?) members at large, or bars a council member or a member of his family from employment by the village (except that…?). Immediate family members are defined as father, mother, brother, sister, wife, husband, son, daughter, or anyone in the council member's household.

Section 4. Open Meetings

All meetings of the council shall be open to the public; provided, that the council may recess at its discretion to discuss any matter (what does this mean?) in a closed session, if the reason for going into closed session is stated in the motion called for such session and no final or official action is taken in the closed session.

Section 5. Decisions

Final decisions of the council of matters of permanent interest, such as the passage of village (tribal?) laws and regulations, shall be by ordinance. Final decisions of the council on matters of temporary interest may be by resolution.

~~(Optional)~~ (what does this mean? should be applicable or not…)
Section 6. Parliamentary Procedure

All meetings shall be conducted in accordance with Roberts Rules of Order or (…unless?) other rules (are specifically?) adopted by the council.

Section 7. Village (tribal?)Meetings

Regular meetings of the general membership of the Native Village of Port Heiden shall be held at least once annually, the date, time and place to be established by the council. Special meetings of the general membership may be called by the President and shall be called by him upon either a majority vote of the council or upon receipt of a petition signed by at least _20%_ of the eligible voters (what is, who are the eligible voters?).

Section 8. Notice

All meetings of the membership must be publicized by the council by customary village methods at least fifteen days in advance. No membership meeting may be called during fishing season or at other times when substantial numbers of village residents are outside the village.

Section 9. Quorum of Membership.

A quorum of the general membership at special meetings shall consist of (at least?)10% of the eligible voters (what, who are eligible voters?), and no business shall (may?)be conducted unless a quorum is present. There shall be no minimum quorum for regularly scheduled annual meetings (…except…? i.e., adopting/amending constitution…) .

ARTICLE XII. TRIBAL COURTS

Option one: (what does this mean?) The judicial power of the Native Village of Port Heiden is vested in the village (tribal?)council. The council may delegate its judicial power in particular cases and may by ordinance establish a permanent tribal court, or courts, of limited or general jurisdiction.

Option two: (what does this mean?)
Section1. Independent Judiciary Established

There shall be a judiciary independent of council control consisting at a minimum of a trial court of general civil jurisdiction and an appellate court with jurisdiction over appeals involving questions of federal law or the village (tribe's?) constitution. The council may establish the court system by ordinance, provided that the independence of the judiciary is preserved.

Section 2. Interim Courts (do you really want to put interim provisions in your constitution…? might be different if the provisions were to be incorporated into the permanent tribal court/judiciary provisions…)

The following courts shall exist until such time as the council establishes a court system by ordinance:

(a) A trial court of general civil jurisdiction consisting of three judges elected by the eligible voters (who are…?) at the first membership meeting under this constitution. The trial court judges shall serve until the next annual membership meeting or until replaced by a court established by council ordinance. Trial court judges shall continue to be elected for one-year terms (are one year terms long enough?) at subsequent annual membership meetings until this provision is superseded by council ordinance

(b) A court of appeals with jurisdiction limited to appeals from the trial court raising questions of federal law or the village (tribal?) constitution. (Three?) Court of appeals judges shall be appointed for particular cases as follows: one by the (presiding judge of the..?)trial (tribal?)court, one by the village (tribal?)council, and a third appointed by the first (other?)two judges.

Section 3. Interim Courts - Qualification of Judges

Trial court judges must be village (tribal?) members, at least 25 years of age, and residents of the village for at least two years (immediately preceding appointment?). They may not be members of the village (tribal?)council. Court of appeals judges may be chosen of the basis of special expertise and need not be members of the village (tribe?). No trial court judge may be appointed to the court of appeals for any case in which he participated in the trial court decision.

Section 4. Interim Courts – Procedures

(a) Trial Court: Immediately following election, the trial court judges shall select from their number (amongst themselves?) a chief judge, who shall be responsible for developing procedures (every year?) for the trial court.

(b) Appeals: Appeals from trial court decisions will be taken by delivering a notice of appeal and statement of reasons for appeal to the chief judge of the trial court and to the president of the village (tribal?)council, who shall direct the trial court and village (tribal?)council to appoint appellate judges. Upon appointment of a full court of appeals, that court shall first determine if the appeal raises questions of federal law or the village (tribal?)constitution. If not, it will dismiss the appeal. If so, it will develop procedures for consideration of the appeal.

Section 5. Judicial Supremacy

Decisions of the trial court or, where applicable, the appellate court are final, subject only to such federal court jurisdiction as may exist.

ARTICLE XIII. SEVERABILITY

If any provision of this constitution should be declared invalid by a federal or tribal court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in effect.

ARTICLE XIV. SAVINGS CLAUSE

Section 1. Existing Law Remains in Effect

To the extent consistent with this constitution, all previous ordinances and resolutions adopted by the traditional council of Port Heiden and all customary village (/tribal?)law shall remain in effect following the adoption of this constitution.

Section 2. Revisions

In the event of future constitutional revisions, all previous ordinances, resolutions and customary village (/tribal?)laws shall remain in effect to the extent that they are consistent with the new constitution or amendments.

ARTICLE XV. AMENDMENTS

This constitution may be amended by a majority vote of the qualified voters (who are qualified voters? Are they same as eligible voters, adult members, etc.?)in an election called for that purpose, provided that at least _20%_ of those eligible (who is eligible?)vote. The election may take place at the annual membership meeting.

ARTICLE XVI. ADOPTION

Section 1. Effective Date

This constitution shall be effective immediately when adopted by a majority vote of the eligible (who are they?)voters, as defined (where is it defined?) in this constitution, at an election or meeting called for that purpose in which at least _20%_ of those eligible (who are they?)vote (vote or, vote for…?).

Section 2. Transition

(a) Traditional council members elected prior to the adoption of this constitution shall remain in office until the first election under this constitution.

(b) Staggered terms of office for village (tribal?)officials required by this constitution will be established in the first election of officials under this constitution.

DATE OF ADOPTION:_____

CERTIFICATION OF ADOPTION

WE, the undersigned members of the Native Village of Port Heiden, having been selected by vote of the membership to oversee an election called for the purpose of adopting this constitution, certify that we were present at such election conducted on _____, 1994, that this constitution was duly adopted at such election by a vote of _____ for, _____ against, and that at least 20 percent of those entitled (who are they? Are they same or different as *eligible*, *qualified*..., etc.?)to vote cast their ballots.

Dated this _____ day of _____, 1994, at _____, Alaska.

_____
President

_____
Secretary